
OPINION OF THE PUBLIC ACCESS COUNSELOR

RYAN C. MARTIN

Complainant,

v.

MARION COUNTY PROSECUTOR'S OFFICE,

Respondent.

Formal Complaint No.

21-FC-84

Luke H. Britt

Public Access Counselor

BRITT, opinion of the counselor:

This advisory opinion is in response to a formal complaint alleging the Marion County Prosecutor's Office violated the Access to Public Records Act.¹ Chief Legal Counsel Celita Scott filed an answer on behalf of the agency. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on June 24, 2021.

¹ Ind. Code § 5-14-3-1-10.

BACKGROUND

In this case we consider whether 15 months is a reasonable time for an agency to disclose public records in accordance with the Access to Public Records Act (APRA).

On April 1, 2020, Ryan Martin (Complainant), an investigative reporter for *The Indianapolis Star*, filed a public records request with Marion County Prosecutor's Office (MCPO) seeking the following:

Copies of emails and/or text messages from Jan. 1, 2020 to present sent to or from the following individuals: • Ryan Mears • Peg McLeish • Celita Scott • Terrance Tharpe • Ross Anderson that include any of the following keywords: corona-virus, COVID, virus, pandemic, CDC, disease, Italy, China, Singapore, South Korea, health department, public health, closure, closing, close, shut down, contagious, fever, symptoms, public emergency, ventilator, flatten the curve, quarantine

The MCPO acknowledged Martin's request the same day. Over the next year, Martin followed up with the MCPO at least four times to inquire about the status of this request. On June 2, 2021, the MCPO emailed Martin to let him know he would receive the records by the end of the week or early the next week. That did not happen.

As a result, Martin filed a formal complaint against the MCPO on June 24, 2021. Martin argues that the MCPO failed to provide the requested records within a reasonable time as required by the Access to Public Records Act.

On July 13, 2021, the MCPO emailed a response to this office asserting that it provided the records to Martin on June 30, 2021.

The MCPO does not dispute that it received Martin's request on April 1, 2020. The MCPO asserts that it made a request the same day to the Information Services Agency (ISA) to pull the emails from the city-county servers.

The MCPO estimates that it received the emails from the search no later than May 2020. The MCPO describes the delay in production of the records as a combination of issues with accessing the files from ISA and getting them into a workable format to perform review prior to release, and the added responsibilities during the COVID-19 pandemic, which included the development, implementation, and administration of protocols.

ANALYSIS

1. The Access to Public Records Act

The Access to Public Records Act (APRA) states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." Ind. Code § 5-14-3-1. The Marion County Prosecutor's Office (MCPO) is a public agency for purposes of APRA; and therefore, subject to its requirements. *See* Ind. Code § 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy the agency's public records during regular business hours. Ind. Code § 5-14-3-3(a).

Indeed, APRA contains mandatory exemptions and discretionary exceptions to the general rule of disclosure. *See* Ind. Code § 5-14-3-4(a)—(b).

2. Reasonable time

APRA requires a public agency to provide public records to a requester within a reasonable time after receiving a request. Ind. Code § 5-14-3-3(b). Notably, APRA does not define the term “reasonable time.”

Here, Martin and the MCPO disagree about whether the agency complied with APRA’s reasonable time standard by taking more than a year to provide the requested records. Specifically, based on the information provided, it took the MCPO around 15 months to provide the records to Martin.

The determination of what is a reasonable time for production depends on the public records requested and circumstances surrounding the request. Undoubtedly, certain types of records are easier than others to produce, review, and disclose. As a result, this office evaluates these issues case by case.

In this case, Martin requested emails and text messages exchanged between five individuals during the first three months of 2020.

Usually, searching for, retrieving, and reviewing responsive emails and text messages takes more time than other types of public records kept in the ordinary course of business. Still, the inquiry does not end there.

This office has long recognized that certain factors are relevant in evaluating whether an agency is following APRA's reasonable time standard.

These factors include, but are not limited to, the following:

- The size of the public agency;
- The size of the request;
- The number of pending requests;
- The complexity of the request; and
- Any other operational considerations that may reasonably affect the public records process.

Undoubtedly, the MCPO is a large, sophisticated public agency that is capable of receiving and adequately responding to public records requests in accordance with APRA.

The size and complexity of the request in this case is less clear. Indeed, the relevant time frame (January 1, 2020, to April 1, 2020) is narrow. Still, based on the parties' filings, it is unclear how many records are involved.

The most important factor in this case is the operational considerations that may reasonably affect the production of public records. The MCPO, like other governmental entities, experienced significant operational adjustments as a result of the pandemic. For instance, the MCPO's 2020 annual report indicates the office moved nearly 400 employees to remote work last year. Undoubtedly, such sweeping operational changes would affect the timeline to produce public records.

At the same time, APRA requires production of public records in a reasonable time. Although this office acknowledges and understands the operational difficulties caused by the pandemic, 15 months overshoots the confines of reasonable time.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Marion County Prosecutor's Office violated the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LHB', is positioned above the name of the signatory.

Luke H. Britt
Public Access Counselor